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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

D.H. et al., Petitioners, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY BUREAU OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	A156542 (Contra Costa County Super. Ct. No. J1800537)

D.Y. (Mother) and D.H. (Father) separately petition this court for extraordinary writ review of a juvenile court order terminating reunification services for Mother, denying visitation for Father, and setting a selection-and-implementation hearing for their young son (the minor). Mother argues that she should have received an additional six months of services, and Father argues that he should have been granted visitation with his son. We disagree and deny the petitions.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Real party in interest Contra Costa County Bureau of Children and Family Services (Bureau) filed a dependency petition one week after the minor was born under

Welfare and Institutions Code section 300, subdivision (b) (failure to protect).[1] The petition alleged that both the minor and Mother tested positive for methamphetamines and cannabinoids after Mother gave birth, that Mother admitted to using methamphetamines and marijuana while she was pregnant, and that Mother also reported that she engaged in prostitution. Father was listed as the alleged father, and there were no allegations specific to him. At the time the minor was born, Mother and Father were living together in a hotel, and the money Mother earned from prostitution paid for rent.

While Mother was still in the hospital after giving birth, a social worker recommended to Mother that she seek drug treatment at an in-patient program. A social worker also interviewed Father by phone. Father reported that he had recently gained full custody of an older child (the minor's half sister, hereafter Sister) after the mother of that child had kidnapped her three times. Further investigation revealed Father had a criminal history dating back to 1999.

The juvenile court ordered the minor detained, and he was placed in foster care. The court ordered that Mother be allowed weekly supervised visitation and that Father would not be allowed visitation until his paternity was established.

Mother tested positive for marijuana on May 25, 2018, and did not test again. Mother had a total of six visits with the minor scheduled between early June and early July 2018. She attended the first and third visits but did not show for the second or final three visits. Because Mother missed three visits in a row, the Bureau suspended the visits until she contacted the social worker to reschedule. Visits were reinstated in late July. She thereafter missed about two out of every three visits.

Sister became the subject of a separate dependency proceeding and was ordered detained in June 2018. Father was ordered to appear in court and present Sister to the Bureau by June 18. When Father did not do so, the Bureau filed an ex parte application and order requesting a warrant for Sister. The court issued an arrest warrant for Father

[1] All statutory references are to the Welfare and Institutions Code.

after he did not appear for a July 5 jurisdictional hearing for Sister in the separate proceeding.

Mother and Father were not present at the jurisdiction hearing held in July 2018. The juvenile court sustained the petition's allegations. Mother was permitted visitation every other week if she confirmed the visit 24 hours in advance and was present two hours before the visit was to begin. At this point, Father's status had not been raised from alleged father, because he did show for a court-ordered paternity test.

By the time the dispositional hearing was held in August 2018, Father had taken a DNA test, which indicated he was the biological father. Because he had not, however, taken steps to have his status raised to presumed father, the Bureau informed the juvenile court that it would not recommend that he be provided with reunification services. The Bureau also informed the court that it appeared that Father had "absconded with [Sister]" and that it was "apparent that [Father was] hiding [Sister] from the Bureau in order to circumvent her from being taken out of his custody. The Bureau has had no contact with [Sister] and cannot confirm if she is safe. The Bureau has substantial concern for [Sister's] well-being."

Mother, but not Father, was present at the August dispositional hearing. The juvenile court adjudged the minor a dependent child and placed him in out-of-home care. The court also made findings as to both parents. As to Mother, the court found that she had made no progress toward alleviating or mitigating the causes necessitating her son's placement in foster care. The court ordered reunification services for Mother and allowed her to have a minimum of four one-hour, supervised visits each month. As for Father, the court found by clear and convincing evidence that he had on one or more occasions willfully abducted the minor's half sibling and either refused to disclose her whereabouts or refused to return physical custody of her to her placement. (§ 361.5, subd. (b)(15) [court need not provide services upon finding that parent has abducted minor or minor's sibling].) The court found by clear and convincing evidence under section 361.5, subdivision (e)(1), governing reunification services to incarcerated parents, that providing services to Father would be detrimental to the minor and not in his best

interests. Finally, the court found that contact or visitation between Father and the minor would be detrimental to the minor, and ordered that there be no contact or visitation between the two. Neither parent appealed from the dispositional order.

Mother's visits with the minor became more consistent starting in late November 2018, and she was attentive to the minor's needs and engaged with him throughout visits. The Bureau reported in a January 2019 review report that Mother had "seemed nonchalant and disinterested in her services. She has not stated a clear definition of her issues that have brought this dependency to this point." She did not test for drugs as required, and she had not completed any of her services. She then "stopped all communication" with the Bureau. As for Father, he reportedly had "avoided contact with the Bureau for some time." The Bureau recommended that the juvenile court terminate reunification services to Mother and schedule a selection-and-implementation hearing (§ 366.26).

The parents were both present for the contested six-month review hearing held on February 7, 2019. Mother's attorney objected to the recommendation and presented evidence of Mother's efforts to engage in services: (1) a certificate showing she had completed a four-hour parenting-education course, (2) a certificate of completion for level two of an adult treatment program dated three days before the hearing, (3) attendance records for 12-step programs, and (4) documents dated the day before the hearing indicating Mother had authorized a program to communicate with her attorney and the social worker about her progress. Counsel argued that Mother was now "fully engaged in her case plan" and requested that Mother receive an additional six months of services. County counsel, by contrast, stated that she "would not stipulate for a minute that any of these [documents] are actually authentic" and that "I don't believe that the Court can find any credibility to these parents."

Father's counsel also argued that he had voluntarily engaged in programs despite not receiving reunification services. Counsel requested that Father receive visits with the minor. County counsel opposed the request and noted that the Bureau had only recently located Sister, who apparently had been with Mother. According to county counsel, "So

the visits that [Mother] had missed in the beginning was because they were both hiding this little half-sibling [Sister] the entire time. Since that date, they haven't wanted to be involved in the Bureau– participate in– cooperate with the Bureau, so I don't think that we can take anything that they have provided us with at face value." The minor's counsel agreed with the Bureau's recommendation.

The juvenile court observed that even if Mother had participated in a recovery program, she "wasn't getting anything out of it" given that she had missed 21 drug tests. The court faulted the parents for being deceptive by hiding Sister and noted that they had "lied and been deceptive and manipulative." The court further stated that Mother had not done "nearly enough" to overcome the issues that had led to dependency because an "outpatient [program] would not be appropriate for a child born with a positive tox[icology]."

The court terminated reunification services for Mother and scheduled a selection-and-implementation hearing for May 16, 2019. Father's counsel again stated that Father requested supervised visits. The court responded, "No. [¶] I am following the recommendation here [in the Bureau's report]." County counsel asked, "So the Court is continuing the prior order of, it looks like, August 9th, regarding the detriment finding and no contact with [Father]?" The court responded, "Absolutely. Detriment finding as to [Father]. Absolutely." The form minute order entered after the hearing has a checkmark next to the statement "No visitation/contact between child & father (detrimental)."

Both parents timely sought writ review.

II.
DISCUSSION

Neither parent disputes that Mother missed several visits with the minor and almost all drug tests and that they both hid Sister from the Bureau for months. And Father never challenged the dispositional order that denied him reunification services and found that contact and visits between him and the minor would be detrimental to the

minor. They nonetheless argue that the juvenile court erred when it terminated Mother's reunification services and denied visitation to Father. We reject both arguments.

A. Substantial Evidence Supports the Termination of Reunification Services to Mother.

Mother argues that the juvenile court erred when it terminated her reunification services, but she is mistaken. Where, as here, a child is under the age of three on the date of removal and the juvenile court finds by clear and convincing evidence that the parent "failed to participate regularly and make substantive progress in a court-ordered treatment plan," the court may schedule a hearing under section 366.26 unless the court finds there is a "substantial probability" that the child "may be returned to his or her parent . . . within six months," in which case "the court shall continue the case to the 12-month permanency hearing." (§ 366.21, subd. (e)(3).) There are two distinct determinations under the statute: whether a juvenile court is justified (but not required) to schedule a selection-and-implementation hearing upon a finding by clear and convincing evidence that a parent failed to regularly participate and make substantive progress in the court-ordered treatment plan, and whether the court shall order an additional six months of services notwithstanding those findings if it determines there is a substantial probability the child may be returned to his or her parent within six months. (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1027-1028.)

Mother argues that the juvenile court erred in finding both that she did not regularly participate in her case plan and that there was no substantial probability that the minor may be returned to her care in six months. "We review an order terminating reunification services to determine if it is supported by substantial evidence. [Citation.] In making this determination, we review the record in the light most favorable to the court's determinations and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] 'We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.' " (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.)

In arguing that there was insufficient evidence that Mother failed to regularly participate in her court-ordered treatment plan, Mother points to the fact that visits with the minor went well and that she provided evidence of participation in some services. But she omits the facts that she missed several visits and all but one drug test, tested positive for drugs the one time she did test, was found to lack credibility, and had participated in outpatient treatment only, which the court considered to be insufficient under the circumstances. Given this undisputed evidence, there are more than sufficient facts to support the juvenile court's order. (*Kevin R. v. Superior Court*, *supra*, 191 Cal.App.4th at pp. 688-689.) As for whether there was a substantial probability that the minor may be returned to Mother within six months, Mother stresses that she was not required to show under section 366.21 that there was a substantial probability the minor *would* be returned to her care in six months, only that he *may* be returned to her care in six months. The evidence before the juvenile court was that at the time the minor was born, Mother was living in a hotel room and supporting herself with income from prostitution and was using drugs, she took insufficient steps to overcome the issues that led to the initiation of dependency proceedings, and she was "deceptive and manipulative" in hiding Sister from the Bureau. Under the circumstances, there was sufficient evidence to support the juvenile court's order.

B. The Juvenile Court Did Not Err in Denying Father Visitation.

Father argues that the juvenile court erred when it denied him visitation, but he is incorrect as a matter of both law and fact.

At the August 2018 dispositional hearing, the juvenile court denied reunification services to Father and found that contact or visitation between him and the minor would be detrimental to the minor. Father did not appeal from the dispositional order or otherwise challenge those findings. When his attorney later raised the issue of visits at a January 2019 hearing, the juvenile court agreed with county counsel that Father would need to petition for a change in court order (§ 388) to seek visitation. Father never filed such a request, which would have required him to show a change in circumstances since the juvenile court denied services and that visitation would be in the minor's best interest.

Instead, he simply requested visitation at the review hearing, and the juvenile court denied the request by continuing the previous (unchallenged) order.

In his writ petition, Father relies on section 366.21, subdivision (h), which is inapposite. The statute provides that where the juvenile court *terminates reunification services* and orders a selection-and-implementation hearing, the court "shall *continue* to permit the parent . . . to visit the child pending the hearing unless it finds that visitation would be detrimental to the child." (§ 366.21, subd. (h), italics added.) Here, because Father never received reunification services and never had visits with the minor, there was nothing to "continue."

Even though the juvenile court was not required to make findings under section 366.21, subdivision (h), the court specifically stated at the six-month review hearing that visits between Father and the minor would be "[a]bsolutely" detrimental. We thus disagree with Father that the minute order entered after the hearing "appears to be merely a standard 'check the box' form," with insufficient focus on the issue. And under whatever standard of review applies to the finding of detriment, the court would affirm such a finding given the minor's young age, Father's lack of contact with the Bureau, and Father's hiding Sister from the Bureau.

III.
DISPOSITION

The petitions for extraordinary writ review are denied. The requests to stay the selection-and-implementation hearing scheduled for May 16, 2019, are denied as moot. The decision shall become final immediately.

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Humes, P.J.

WE CONCUR:

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Banke, J.

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Sanchez, J.